



W.A.Nos.1289, 1272, 1273 and 1294 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.03.2023

Coram:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

Writ Appeal Nos.1289, 1272, 1273 and 1294 of 2022
and
C.M.P.Nos.8147, 8014, 8015, 8023, 8025, 8162 and 8163 of 2022

The General Manager,
Erode District Co-operative
Milk Producers Union Ltd.,
Vasavi College Post,
Erode.

.. Appellant in W.A.No.1289 of 2022

The General Manager,
Erode District Co-operative
Milk Producers Union Ltd.,
Erode.

.. Appellant in W.A.No.1272 of 2022

Erode District Co-operative
Milk Producers Union Ltd.,
Rep. by its General Manager,
Erode.

.. Appellant in W.A.Nos.1273 & 1294 of 2022

Vs.

1. The Presiding Officer, Labour Court, Salem.

2. K.N.Palanichamy

.. Respondents in W.A.No.1289 of 2022

1. K.N.Palanichamy

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2. The Presiding Officer, Labour Court, Salem.

.. Respondents in W.A.Nos.1272 & 1273 of 2022

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1. K.N.Palanisamy

2. The Government of Tamil Nadu,
Rep. by its Secretary,
Animal Husbandry and Fisheries Department,
Fort St.George, Chennai-600 009.

3. The Commissioner for Milk Production
and Dairy Development,
Madhavaram,
Chennai-600 051.

.. Respondents in W.A.No.1294 of 2022

Writ Appeal No.1289 of 2022 filed under Clause 15 of the Letters Patent against the order dated 30.11.2021 passed by the learned Single Judge, in W.P.No.10948 of 2003 on the file of this Court.

Writ Appeal No.1272 of 2022 filed under Clause 15 of the Letters Patent against the order dated 30.11.2021 passed by the learned Single Judge, in W.P.No.37613 of 2003 on the file of this Court.

Writ Appeal No.1273 of 2022 filed under Clause 15 of the Letters Patent against the order dated 30.11.2021 passed by the learned Single Judge, in W.P.No.25822 of 2003 on the file of this Court.

Writ Appeal No.1294 of 2022 filed under Clause 15 of the Letters Patent against the order dated 30.11.2021 passed by the learned Single Judge, in W.P.No.25823 of 2003 on the file of this Court.



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For appellant in all the appeals : Mr.R.Bala Ramesh

For respondents in W.A.Nos.1289 and 1272 of 2022 :

R-1 - Labour Court

Mr.V.Ajay Khose for M/s.R.Krishnasamy for R-2

For respondents in W.A.No.1273 of 2022:

Mr.V.Ajay Khose for M/s.R.Krishnasamy for R-1

R-2 Labour Court

For respondents in W.A.No.1294 of 2022:

Mr.V.Ajay Khose for M/s.R.Krishnasamy for R-1

Mrs.Sanga Mithrai, Spl.G.P. for RR-2 and 3

COMMON JUDGMENT

(Common Judgment of the Court was delivered by S.Vaidyanathan, J)

As against the common order dated 30.11.2021 passed by the learned Single Judge in W.P.Nos.37613 and 10948 of 2003 and 25822 and 25823 of 2006, the respective Writ Appeals have been filed.

2. W.A.No.1272 of 2022 has been filed by the Management, challenging the order passed by the learned Single Judge in W.P.No.37613 of 2003, in which, C.P.No.115 of 2000 has been questioned which deprived the employee partial



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relief, but the employee has not preferred any appeal and he has accepted it.

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3. W.A.No.1273 of 2022 has also been filed by the Management, challenging the order passed by the learned Single Judge in W.P.No.25822 of 2006, in which, the order passed in C.P.No.303 of 2003 has been questioned insofar as certain benefits granted by the Labour Court to the employee.

4. W.A.No.1289 of 2022 has also been filed by the Management, challenging the order passed by the learned Single Judge in W.P.No.10948 of 2003, in which the order passed in C.P.No.115 of 2000 has been questioned, insofar as granting the benefits to the employee/workman.

5. W.A.No.1294 of 2022 has also been filed by the Management, challenging the order passed by the learned Single Judge in W.P.No.25823 of 2006, in which, G.O.(Ms).No.146, Animal Husbandry and Fisheries Department, dated 18.09.2000, has been questioned, with a further prayer regarding consequential relief.

6. The employee in these appeals had joined the services of the Management of Erode District Co-operative Milk Producers' Union Limited, on

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25.06.1987 and by order dated 27.02.1997, the authority had granted

permanent status to him. The relevant portion of the order is extracted below:

"தாங்கள் ஆட்சியாளராக (occupier) இருக்கும் பெரியார் மாவட்ட கூட்டுறவு பால் உற்பத்தியாளர்கள் ஒன்றியம் லிட். சங்கத்தின் கட்டுப்பாட்டில் உள்ள பெரியார் மாவட்ட கூட்டுறவு பால் உற்பத்தியாளர்கள் ஒன்றியம் லிட்., சித்தோடு, தொழிற்சாலை, தொழிற்சாலை சட்டத்திற்குட்பட்டது. இதில் ஒரு நாளில் 200 நபர்களுக்கு மேல் பணிபுரிவதால் தமிழ்நாடு தொழிற் நிறுவனங்கள் (தொழிலாளர்கள் பணி நிரந்தரப்படுத்துதல்) சட்டம் 1981 மற்றும் விதிகள் 1981-க்குட்பட்டதாகும்.

தங்கள் தொழிற்சாலையில் பணிபுரியும் திரு.கே.என்.பழனிசாமி என்ற தினக்கூலி பணியாளர், தான் 25.06.87-ல் பணியில் சேர்ந்ததாகவும், தொடர்ந்து டிசம்பர் 1987 முதல் நவம்பர் 1988 முடிய உள்ள 2 ஆண்டுகளில் 480 நாட்கள் பணி நிறைவு செய்ததாகவும் தெரிவித்து மேற்படி சட்டப் பிரிவு 3(1)ன்படி அவரை நிரந்தர அந்தஸ்து வழங்க ஆணைகள் பறப்பிக்குமாறு மேற்படி சட்டத்தின் கீழ் அதிகார வரம்புள்ள (Authority) அதிகாரியான ஈரோடு, தொழிற்சாலைகள் துணைத் தலைமை ஆய்வருக்கு மனு செய்திருக்கிறார்.

இதன் மீது நிர்வாகத்தின் குறிப்புரைகள் ஆதாரத்துடன்/பதிவேடுகளுடன் பார்வை 2-ன் படி கேட்கப்பட்டதில், பார்வை 3ல் காணும் நிர்வாகத்தின் கடிதத்தில் மேற்படி தொழிலாளர், டிசம்பர் 87 முதல் நவம்பர் 89 வரை 24 தொடர் மாதங்கில் 496 நாட்கள் பணிபுரிந்துள்ளதாக தெரிவிக்கப்பட்டுள்ளது.

எனவே மேற்படி தமிழ்நாடு தொழில் நிறுவனங்கள் (தொழிலாளர்கள் பணி நிரந்தரப்படுத்துதல்) சட்டம் 1981 மற்றும் விதிகள் 1981-ன் பிரிவு 3(1)ன் படி, மேற்படி திரு.கே.என்.பழனிசாமிக்கு நவம்பர் 89 மாதத்துடன் 480 நாட்கள் பணி செய்துள்ளார். எனவே 2 ஆண்டுகளில் 480 நாட்கள் பணி நிறைவு செய்த மறுநாள் முதல் நிரந்தர அந்தஸ்து வழங்கப்பட வேண்டும் என இச்சட்டத்தின் கீழ் நியமிக்கப்பட்ட அதிகாரியான (Authority) என்னால் பொது மேலாளரான தங்களுக்கு உத்திரவு வழங்கப்படுகிறது."



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7. The above order was not questioned by the Management, as the employee had completed 480 days of service in a period of 24 calendar months and in the light of Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (hereinafter called as '1981 Act') and the employee is deemed to have attained permanent status. On 18.09.2000, the Government, through its Animal Husbandry and Fisheries Department, had issued G.O.(Ms).No.146 recognising the services of the workmen with effect from the date of issuance of the said G.O., granting permanent status from 18.09.2000. Based on that, the order of regularisation was issued to the workman on 16.12.2000. This was questioned in W.P.No.5293 of 2001, which was filed by the employee/K.N.Palanichamy and the same was dismissed on 09.07.2001 by the learned Single Judge, with liberty to the workman to question the said G.O.(Ms.)No.146 (supra).

8. The employee, in the meantime, has moved the Labour Court for computing monetary benefits due to him by filing C.P.No.115 of 2000. The Labour Court, by taking note of the order granting permanent status to the workman on 27.02.1997, has granted certain monetary benefits.

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9. In the meanwhile, the employee has also filed another petition in C.P.No.303 of 2003 before the Labour Court claiming the difference in wages for the subsequent period that was made in C.P.No.115 of 2000. The Labour Court, on 28.03.2006, dismissed the said C.P.No.303 of 2003 filed by the workman.

10. Challenging the order passed in C.P.No.115 of 2000, the Management had preferred W.P.No.10948 of 2003 before this Court and questioning the order passed in C.P.No.303 of 2003, the employee had preferred W.P.No.25822 of 2006. The employee has also filed W.P.No.37613 of 2003 challenging C.P.No.115 of 2000 and the employee has also filed W.P.No.25823 of 2006 before this Court challenging G.O.(Ms).No.146 (supra) and the consequential orders dated 06.10.2000 and 16.12.2000 and to direct the Management to confer the employee permanency as per the order dated 27.02.1997 passed by the Authority under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, with effect from 01.12.1989, with all consequential benefits.

11. The main contention of the employer before this Court is that the employee having received the order 16.12.2000 passed by the Erode District Co-

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operative Milk Producers' Union Limited, Erode, regularising his services, did not report for work and he has joined duty only on 04.01.2003 and that he has not reported for work for nearly 25 months from the date of receipt of the said order dated 16.12.2000. It is further stated by the Management that the Labour Court has rightly computed the settlement in favour of the workman and that the employee sought for regularisation from an anterior date. The order of the authority dated 27.02.1997 runs counter to the provisions of the Tamil Nadu Co-operative Societies Act, 1983, more so, Rule 149 of the Tamil Nadu Co-operative Societies Rules. Since the employee has entered into service without being sponsored by the Employment Exchange and in contravention of Rule 149, it is deemed to be a back-door entry and he is not entitled to any benefits, more so, in view of the judgment of the Supreme Court reported in State of Karnataka Vs. Umadevi (3) and others, reported in 2006 (4) SCC 1.

12. The learned counsel appearing for the Management also drew the attention of the Court to the acknowledgement card duly signed by the employee on 21.12.2000 to show that he had received the letter sent by the employer with regard to the order granting permanent status, but he did not report for work. Hence, the impugned order of the learned Single Judge is going beyond the scope of the computation petition and when the claim is made in contravention



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of the Act, the order passed by the Authority is not at all maintainable. However, the amount payable as ordered by the Labour Court, was paid by the Management by complying with the order and insofar as that portion of the order that has gone against the employer in the grant of permanent status to the workman, is concerned, the Management has not questioned the same.

13. Mr.Ajay Khose, learned counsel appearing for the workman/employee submitted that the employee had joined the services of the Management on 25.06.1987 as daily-rated-workman at Rs.29/- per day and that when the demand was made by the Union for fair wages to be paid on a par with others, he was disengaged from service. The Labour Court, by Award dated 15.02.1996 in I.D.No.149 of 1994, held that the employee would be entitled to be reinstated in service without back-wages. The Labour Court has also held that the non-employment was illegal. This order has become final. The employee was reinstated into service by proceedings dated 03.07.1996, pursuant to the Award of the Labour Court. However, he was given the position of a casual labourer and not regular employment. This made the employee knock at the doors of the authority constituted under the 1981 Act. On 27.02.1997, by proceedings of the Authority (extracted supra), the employee was directed to be conferred permanent status in the light of Section 3(1) of the Act, which has become final



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and the same has not been contested. The contention of the Management that the order of the Authority is erroneous, may not be correct, as the Authority is empowered to pass the said order. As long as said order is not questioned/not set aside by the higher forum, it is the duty cast upon the employer/Management to implement the same. Since it has not been done, the employee has filed Writ Petition in W.P.No.14503 of 1999 to implement the order of the Authority and the said Writ Petition was dismissed on 27.08.1999. Though the word 'dismissed' has been used in the Writ Petition, liberty has been given to the employee to work out the remedy before the Labour forum under the Industrial Disputes Act, and the relevant portion of the order passed in the said Writ Petition is extracted below:

"4. It is needless to state that once an order is passed under Section 3 of the Act, the petitioner who is an permanent workman whose permanency has been conferred by an order by the competent authority under the Act, even though a consequential order is not passed by the employer, it is open to the petitioner to institute appropriate proceedings under the Industrial Disputes Act as the petitioner is a workman for all purposes of the Act."

14. Mr.Ajay Khose, learned counsel further submitted that the contention of the Management that the employee did not report for work after the G.O.

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dated 18.09.2000 and the order of regularisation dated 16.12.2000, is not correct, as there is evidence which was accepted by the Labour Court and the employee was given employment only as a casual labourer and he received the amount which is evident from Document Nos.28 and 29 as referred to by the Labour Court in C.P.No.303 of 2003, in the order dated 28.03.2006. The Labour Court has granted certain benefits in the said C.P.No.303 of 2003, which reads as follows:

"15. எனவே, மேற்சொன்ன சந்தர்ப்பங்களில், மனுவில் கோரியுள்ள 2000, 2001 மற்றும் 2002 ஆண்டுகளுக்கு தேசிய மற்றும் பண்டிகை விடுப்பு சம்பள தொகையாக முறையே ரூ.438/-, ரூ.401/- மற்றும் ரூ.437/- ஆகமொத்தம் ரூ.1276/-ஐ மனுதாரருக்கு எதிர்மனுதாரர் நிர்வாகம் வழங்க வேண்டும் என்றும், மனுவில் கோரியுள்ள காலங்களுக்கான சம்பள நிலுவைத் தொகை எதுவும் மனுதாரருக்கு கிடைக்கத்தக்கதல்ல என்றும் இந்த பிரச்சனைகளுக்கு இந்நீதிமன்றம் விடை காண்கிறது.

16. இறுதியில், மனுவில் கோரியுள்ள 2000, 2001 மற்றும் 2002 ஆகிய ஆண்டுகளுக்குரிய தேசிய மற்றும் பண்டிகை விடுப்பு சம்பளத் தொகையாக ரூ.1276/-ஐ எதிர்மனுதாரர் நிர்வாகம் இவ்வுத்திரவு ஏற்பட்ட நாளிலிருந்து 6% பின் வட்டியுடன் மனுதாரருக்கு செலுத்த வேண்டும் என்றும், மனுதாரருக்கு செலவுத் தொகையாக ரூ.200/-ஐ எதிர்மனுதாரர் நிர்வாகம் செலுத்த வேண்டும் என்றும் இந்நீதிமன்றம் உத்திரவிடுகிறது. மனுவில் கோரியுள்ள சம்பள நிலுவைத் தொகை பொறுத்தான பரிகாரம் நிராகரிக்கப்பட்டு தள்ளுபடி செய்யப்படுகிறது."



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15. Mr.Ajay Khose, learned counsel appearing for the employee, drew the attention of this Court to the Government Order dated 18.09.2000 passed in G.O.(Ms).No.146 (supra) recognising the services of 82 daily-rated employees and submitted that the name of the employee in the case on hand has been referred to in Sl.No.7 in Annexure-3 and his date of entry into service is referred to therein as 25.06.1987. It is also useful to refer paragraph No.9 of the said G.O., which reads as follows:

"9. இவ்வாணையில் குறிப்பிட்டுள்ள 82
தினக்கூலி பணியாளர்களின் பணியினை
வரன்முறைப்படுத்த நடவடிக்கை எடுக்கும்படி சிறப்பு
ஆணையர், பால் உற்பத்தி மற்றும் பால் பண்ணை
மேம்பாட்டுத் துறை கோரப்படுகிறார்."

16. According to the learned counsel appearing for the workman, pursuant to the said G.O., dated 18.09.2000, proceedings, dated 06.10.2000 had been issued by the Special Commissioner, Milk Production and Milk Depot Development Department, Chennai to the General Manager, Erode District Co-operative Milk Producers Union Ltd., Erode to create 82 supernumerary posts in the selection list of the employees; to regularise the services of the said 82 casual workers mentioned in the annexure therein, with effect from the date of issuance of the said G.O., dated 18.09.2000 and to issue orders and it was



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directed that the guidelines in the said G.O. may be followed and action has to be taken and reported. Further, the Erode District Co-operative Milk Producers' Union Limited, Erode, issued the order of appointment on 16.12.2000 to the said 82 casual workers, of which, the employee-K.N.Palanisamy was one. Learned counsel further submitted that even though a reference was made in the said order of appointment, dated 16.12.2000 to the said G.O., dated 18.09.2000, there was a condition stipulated that there should be a settlement under Section 18(1) of the Industrial Disputes Act, 1947 and that there was no settlement entered into between the parties concerned in these Writ Appeals. There is no evidence produced before this Court to show that there was a settlement entered into between the parties. Learned counsel appearing for the employee herein submitted that even though the employer/Management has contended that the employee refused to receive the said appointment order dated 16.12.2000 and it was once again sent on 20.12.2000 by Registered Post, which was immediately despatched and received by the employee, the Telegram sent by the employer produced before this Court would state that the employee was asked to come to the Management to receive the appointment order. Though normally the said document/Telegram would not be produced before this Court, as the same was not marked as an Exhibit before the Labour Court, the appellant/**Management being the State** within the meaning of Article 12 of



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the Constitution of India, **the said document has not been disputed**, and we are referring to the same. The documents which are not produced before the Labour Court, cannot be accepted by this Court, as laid down by this Court in the decision reported in 1992 (2) LLJ 101 (Madras High Court) (Madras Aluminium Company Ltd., Mettur Dam Vs. Labour Court, Coimbatore and another), wherein it has been held as follows:

"7. It is not in dispute that while the matter was argued before the Labour Court, neither the Tamil Nadu Boilers Attendants Examination Rules were referred to or pressed into service by the petitioner/management, nor any details regarding the initial appointment of the juniors of the second respondent who were confirmed in service, be it a helper or in any other capacity, were produced for the consideration of the Labour Court. It is not given to any of the parties to a proceeding to introduce points and produce the records at different stages as it suits them. The parties before the Labour Court have invited the decision of the Labour Court on the basis of certain materials, and on a particular plea raised before it and if that be so, it is not open to one of the parties to the proceedings before the Labour Court to try to introduce new materials which involve factual verification regarding the correctness of the claims now made before this Court and thereby attack the findings, and conclusions of the Labour Court. The submissions that are sought to be raised in the form of reply-affidavit and any advanced at the time of arguments were not even thought of as a challenge to the very award even at the time of filing of the writ petition. Consequently, in my view, it is not given to the petitioner/management to attack the award of the Labour Court on grounds either advanced or on materials which were never placed before the said



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Court at the appropriate point of time. This Court, exercising jurisdiction under Art.226 of the Constitution, is concerned with any error apparent on the face of the record and the correctness of the award *vis-a-vis* the said infirmity cannot be tested with reference to plea and materials now sought to be urged and introduced at the time of hearing."

17. It is to be noted that in the order dated 28.03.2006 passed in C.P.No.303 of 2003, there is a mention about the joining of duty by the employee on 04.01.2003. De-hors the Telegram, there is a categorical finding by the Labour Court based on evidence. It is seen that the Telegram dated 31.12.2002 was sent by the Management asking the employee to report for work only and the said Telegram was marked as Ex.M-23 before the Labour Court.

18. The employer has produced the communication dated 04.01.2001 asking the employee to get the regularisation in terms of the proceedings dated 06.12.2000. If the employee has not complied with the said request, there would be disciplinary action, which was not said to be served on him. The employee, aggrieved by the order of appointment dated 16.12.2000, postponing the conferment of permanent status, filed W.P.No.5293 of 2001 and contended that he should be regularised with effect from 01.12.1989 as per the order of the

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authority, and the said Writ Petition was dismissed on 09.07.2001 on the ground that the consequential order alone has been challenged without questioning G.O.(Ms).No.146, dated 18.09.2000.

19. The employee drew the attention of this Court to the fact that he has not given up the benefits ordered by the Labour Court and has sent a communication to the employer on 04.01.2003 stating that without prejudice to his rights, he would be accepting the appointment order.

20. Heard the learned counsel appearing for the parties and perused the materials available on record.

21. The fact that the employee has joined the services of the Management in 1987, is not in dispute, as the Government Order dated 18.09.2000 in Annexure-III therein makes it clear that the employee has joined the services on 25.06.1987 and his name is referred to in Sl.No.7 therein.

22. That apart, the order of the authority (Deputy Chief Inspector of Factories) conferring the permanent status, has not been questioned. Though it has been contended that the order of the authority runs counter to the decision



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of the Apex Court in the case of State of Karnataka Vs. Umadevi (3) and others (cited supra), we are of the view that 1981 Act received assent of the President of India and it contains non-obstante clause. The benefits conferred under the 1981 Act, cannot be taken away. It is no doubt true that the Management is a Society registered under the Tami Nadu Co-operative Societies Act, 1983. It does not mean that the employees can be allowed to work for years together and the provisions of the 1981 Act be made a mockery in the eye of public. In the light of the deeming provision contained in the 1981 Act, the employee is entitled to seek for regularisation/permanent status in terms of the said Acts. Even though the order dated 27.08.1999 passed by the learned Single Judge, in W.P.No.14503 of 1999, permitting the employee to work out his remedy under the Industrial Disputes Act, he has a remedy under Section 6 of the 1981 Act, wherein a complaint can be made against the officials who can be prosecuted by the concerned Magistrate Court. Paragraph 3 of the order dated 27.02.1997 passed by the Deputy Chief Inspector of Factories addressed to the General Manager of the Periyar District Co-operative Milk Producers Union Limited, Erode, shows that on production of the documents by the employer to the authority, the authority has come to the conclusion that the employee had rendered 496 days of service continuously within a period of 24 months from December 1987 to November 1989. The authority has got powers to call for the documents to



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satisfy himself as to whether the employee has completed the required service, which has been done in this case. If the employer has any grievance, the same should have been questioned by way of filing a Writ Petition. But, that has not been done and the Management had allowed the order to become final.

23 .Though the Labour Court has granted certain benefits to the employee in C.P.No.303 of 2003 (order dated 28.03.2006), the learned counsel for the employee submitted that the employee is willing to give up those benefits, provided the monetary benefits due to him in terms of the Award of the Labour Court in I.D.No.149 of 1994, dated 15.02.1996 and the order dated 27.02.1997 conferring permanent status, are extended to him. Since the Labour Court has deprived the back-wages from the date of dismissal till 1996 being the date of the Award, except the benefits that have been deprived by the Labour Court and the monetary benefits that have not been extended by the Labour Court, which has been given up by the employee as stated by his counsel in the present appeals, we are of the view that the employee must be extended all the benefits as if he has joined the service on 25.06.1987 and was confirmed as per the order of the authority, dated 27.02.1997. No settlement and no G.O. or the proceedings of the authority or the Management, can run counter to the provisions of the 1981 Act. It is no doubt true that after getting certain benefits,



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it is open for the employer and employee to enter into settlement giving up some benefits. But that does not mean that by means of G.O., the benefits of the order of the authority granting permanent status could be taken away. We therefore dispose of these Writ Appeals with the following directions/observations :

(i) The employee is deemed to have attained the permanent status, in the light of the order dated 27.02.1987 issued by the Deputy Chief Inspector of Factories, Erode, which was not tested by the Management.

(ii) The employer has admitted that the employee has joined the service in 1987, vide order G.O.(Ms).No.146, dated 18.09.2000 (supra).

(iii) There was no settlement entered into between the workman and the Management in terms of the order dated 16.12.2000 passed by the Erode District Co-operative Milk Producers' Union Limited, Erode, whereby the employee has given up the benefits conferred under the 1981 Act.

(iv) The allegation that the employee was not in service from 2000 to January 2003, may not be correct, as the Labour Court has rendered a finding of fact that he was in service as casual labourer.

(v) In the light of the judgment of this Court in the case of the Management of Chandra Textiles Pvt. Ltd. Coimbatore Vs. N.Palaniswamy (reported in 1986 SCC Online Madras 150 = 1987 (100) LW 166 = 1987 (1) MLJ



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269), the employee can accept the offer of the Management without prejudice to the rights of the parties, and the approbation and reprobation has been dealt with in the above decision of this Court.

(vi) In the light of the judgments of this Court reported in 1997 (3) LLN 544 (M.Irudhayanathan Vs. State of Tamil Nadu) and 1999 (3) LLN 286 (T.N.C.S.Corp. M.R. M.E.S.Emp. Union Vs. T.N.C.S.Corp.), when there is need for a job and the services of the workman have been utilised for years together, it cannot be construed that, for want of vacancy or post, a person cannot be regularised. If the employer's contention is accepted, then G.O.(Ms).No.146 (supra) itself is illegal and all the employees need to be sent out. Since it is a welfare Legislation, the employer thought that there should be a quietus to the issue on hand and having allowed the employees to work for years together, the Management has decided to grant permanent status from a particular date. In the present case on hand, the employee had the benefit of the order of the authority conferring permanent status. The contention of Mr.Bala Ramesh, learned counsel appearing for the Management that if permanent status is given to the employee retrospectively, it will only open the Pandora's Box, cannot be accepted, as we are not deciding any issue which is not before us. Asking the employee to accept whatsoever has been offered by the employer and to ask him to sign in the dotted lines, may not be correct, as the relationship between



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the employer and the employee is like the one between the lion and the lamb.

The employer is expected to calculate the arrears of wages due to the employee excluding the one that has been deprived of by the Labour Court in I.D.No.149 of 1994, and the other benefits that have been given up by the counsel for the workman in the present case and the rest of the amount must be duly calculated and after adjusting the amount if any already paid for the services rendered as casual labourer, the balance shall be paid within a period of four months from the date of receipt of a copy of this judgment.

24. Once the employee is deemed to have attained permanent status from 1989, he shall be paid on a par with his counterparts, and revised wages has to be extended and if the employee has attained superannuation, the employee has to take steps to get his amount paid, within the time stipulated supra. At the time of arguments, the learned counsel appearing for the appellant/Management had produced a Memo, dated 09.03.2023, stating as follows:

"It is submitted that the appellant is the Erode District Cooperative Milk Producers Union Ltd., and a registered cooperative society registered under the Tamil Nadu Cooperative Societies Act, 1983. The Respondent here in is an employee of Cooperative



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Society. It is submitted that the present memo is being filed for giving quietus to the issue with regard to notional payment to be made by the Union on receipt of the notional calculated made by the union. I am herewith enclosing the calculation sheet. It is submitted that as per the above calculation a sum of Rs.6,01,097/- is to be pay to the respondent wherein a sum of Rs.78,105/- already paid, remaining Rs.5,21,895/- is to be paid.

Hence, kindly consider this memo and pass orders and any other order as this Hon'ble Court may deem fit and proper in the interest of justice."

25. The employer (Erode District Co-operative Milk Producers Union Ltd.,) has produced the above said Memo, dated 09.03.2023, quantifying the amount and in order to give quietus to the issue and shorten the life of the litigation, a sum of Rs.5,22,992/- (Rupees five lakhs twenty two thousand nine hundred and ninety two only) $(6,01,097 - 78,105 = 5,22,992)$ shall be paid to the employee by the employer, within a period of five months from today, and if

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he is entitled to pensionary benefits, the same shall also be extended under the Employees' Pension Scheme.

26. There shall be no order as to costs. Consequently, the miscellaneous petitions are closed.

(S.V.N.,J) (R.K.M.,J)
09.03.2023

Index: Yes/no

Speaking Order: Yes/no

Neutral Citation: Yes/no

CS

To

1. The Presiding Officer, Labour Court, Salem.
2. The Government of Tamil Nadu,
Rep. by its Secretary,
Animal Husbandry and Fisheries Department,
Fort St.George, Chennai-600 009.
3. The Commissioner for Milk Production
and Dairy Development,
Madhavaram,
Chennai-600 051.



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S.VAIDYANATHAN, J

and

R.KALAIMATHI, J

CS

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